

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 25, "Competition With Private Enterprise," and to adopt new Chapter 123, "Rest Area Sponsorship Program," and Chapter 124, "Highway Helper Sponsorship Program," Iowa Administrative Code.

These proposed amendments establish a Rest Area Sponsorship Program and a Highway Helper Sponsorship Program and include a coordinating amendment to 761—subrule 25.2(8). Sponsors will provide monetary contribution to the Department in exchange for sponsorship opportunities. The monetary contribution will help support the rest areas and highway helper program. Sponsors will be determined through a fair and transparent procurement process.

Pursuant to Iowa Code section 17A.34, the Department hereby provides notice to the Administrative Rules Coordinator that a service or product may be offered for sale to the public by the Department that competes with private enterprise. However, if any such product or service is deemed to compete with private enterprise, said product or service falls within the exception from application, as set forth in Iowa Code subsection 23A.2(9).

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet e-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than May 22, 2012.

A meeting to hear requested oral presentations is scheduled for Thursday, May 24, 2012, at 1 p.m. at the Administration Building, First Floor South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by June 4, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code subsection 23A.2(9) and Iowa Code section 307.24.

The following amendments are proposed.

ITEM 1. Amend subrule 25.2(8) as follows:

25.2(8) Design, construction, reconstruction, inspection and maintenance of highways including, but not limited to, signs erected in the right-of-way and acknowledgment signs used in the adopt-a-highway, rest area sponsorship and highway helper sponsorship programs.

ITEM 2. Adopt the following new 761—Chapter 123:

CHAPTER 123
REST AREA SPONSORSHIP PROGRAM

761—123.1(307) Introduction and purpose. The rest area sponsorship program is an exchange of a monetary contribution from a person, a firm, or an entity for public recognition in the form of identification displayed on an acknowledgment sign on the main-traveled way of an interstate highway in advance of the exit for a rest area and an interior sign within the primary rest area building. The purpose of the program is to provide contributory support for the primary road fund. The rest areas are funded through the primary road fund and provide a public service.

761—123.2(307) Contact information. Information relating to the issuance of requests for proposals when sponsorship opportunities become available may be obtained from the Office of Maintenance, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at (515)239-1971.

761—123.3(307) Definitions. As used in this chapter, unless the context otherwise requires:

“Acknowledgment sign” means an official sign placed within the right-of-way which meets all design and placement guidelines for acknowledgment signs as covered in Part 2 of the MUTCD, and all sign design principles covered in the most current edition of the “Standard Highway Signs and Markings Book,” as published by the U.S. Department of Transportation, Federal Highway Administration, and which is intended only to inform the traveling public that a highway-related service, product or monetary contribution has been sponsored by a person, firm or entity.

“Advertise” means to provide information on a sign which includes, but is not limited to, any of the following: promotional offers, location directions, a listing of amenities, descriptive words or phrases, telephone numbers, Internet addresses including domain names, slogans or any message that is extraneous to the identification of a single-sponsoring person, firm or entity.

“Identification” means a display on an acknowledgment sign which is limited to the name of the sponsor or a registered or unregistered trademark in addition to or instead of the name of the sponsor, if such mark is used consistently by the sponsor whenever and wherever the firm’s or entity’s name is visible to the public, and the medium will allow. If multiple trademarks are used by the sponsor, identification is provided only by the one in the simplest form needed to identify the sponsor.

“Interstate highway” means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

“Main-traveled way” means the portion of the roadway for movement of vehicles on which through traffic is carried, exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways or parking areas.

“MUTCD” means the Manual on Uniform Traffic Control Devices as adopted in 761—Chapter 130.

“Rest area” means an area or site established and maintained within or adjacent to the right-of-way of an interstate, freeway-primary or primary highway under supervision and control of the department for the safety, recreation, and convenience of the traveling public. Subject to paragraph 123.4(1) “b,” if two rest areas are located in close proximity and serve opposite directions of travel, both rest areas are individually eligible for sponsorship.

“Right-of-way” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

“Sponsor” means a single person, firm or entity which has been approved by the department for the rest area sponsorship program.

761—123.4(307) General provisions.

123.4(1) Scope.

a. This program is limited to the sponsorship of all rest areas located on the interstate highways in Iowa.

b. This program may be limited by the department to those rest areas located in areas where adequate spacing for acknowledgment signs along the main-traveled way is available, in accordance with the MUTCD, Section 2H.08, “Acknowledgment Signs.”

123.4(2) Authority and conditions.

a. Subject to the provisions of Iowa Code section 321.253, the department may erect in advance of the exit for the rest area one acknowledgment sign per rest area, per direction of travel, on the interstate highway right-of-way along the main-traveled way.

b. The department may allow an interior sign, with size and message approved by the department, within the primary building which may advertise the sponsor.

c. Subject to the provisions of Iowa Code chapter 23A, the department may, through an equitable procurement process, receive a monetary contribution from an approved sponsor. This monetary contribution shall be deposited into the primary road fund and subsequently spent for highway purposes, including the maintenance and operation of the rest areas.

d. The department shall have the right to discontinue the program, or portions thereof, if the program or any component part of the program is found to be in violation of federal law or regulation.

e. The department shall have the right to terminate a sponsorship agreement for reasons, as determined by the department, based on safety concerns, interference with the free and safe flow of traffic, or a determination that the sponsorship agreement or acknowledgment sign is not in the public interest.

761—123.5(307) Sponsorship agreements.

123.5(1) Federal Highway Administration approval. All sponsorship agreements are subject to approval by the Federal Highway Administration.

123.5(2) Qualifications. A person, firm or entity may be eligible to participate as a sponsor for the program. However, the department may deny the proposal or application from any potential sponsor if the sponsor’s participation might be deemed by the state as a partisan endorsement or have an adverse effect on the program.

123.5(3) Selection process. Sponsors will be approved through a fair and transparent procurement process, as approved by the department, subject to the provisions of 761—Chapter 20.

123.5(4) Discrimination prohibited. As a condition of approval as a sponsor, the sponsor shall give the department written assurance of the sponsor’s conformity with all applicable laws prohibiting discrimination based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability.

761—123.6(307) Acknowledgment sign criteria.

123.6(1) Identification displayed.

a. An acknowledgment sign shall not advertise.

b. An acknowledgment sign shall not contain any messages, lights, symbols or trademarks that resemble any official traffic control device.

c. An acknowledgment sign shall contain the appropriate lettering to indicate “REST AREA” and may contain an identification of one sponsor.

d. The department shall review the acknowledgment sign proposed by the sponsor and shall have full authority to determine whether proposed designs from sponsors advertise or provide identification.

e. The department shall not approve any acknowledgment sign proposed by the sponsor if the sign might be deemed a partisan endorsement or have an adverse effect on the program.

123.6(2) Design and placement of acknowledgment sign.

a. The department shall determine when adequate spacing is available to accommodate the placement of an acknowledgment sign in accordance with the MUTCD.

- b. The entire sign display area shall not exceed 24 square feet.
 - c. The area reserved for the identification of the sponsor shall not exceed one-third of the total area of the sign, shall be a maximum of 8 square feet, and shall not be located at the top of the sign.
 - d. Sponsors must provide signs measuring 24 inches high and 48 inches wide that are fabricated from .080 aluminum with 2-inch radius corners and have a ½-inch white border for placement on the acknowledgment signs.
 - e. The department shall inspect signs received from sponsors, and if the signs meet the requirements contained in this rule, the department shall perform the installation.
 - f. All acknowledgment signs erected by the department shall conform to the MUTCD.
- These rules are intended to implement Iowa Code subsection 23A.2(9) and Iowa Code section 307.24.

ITEM 3. Adopt the following new 761—Chapter 124:

CHAPTER 124
HIGHWAY HELPER SPONSORSHIP PROGRAM

761—124.1(307) Introduction and purpose. The department operates the highway helper sponsorship program on the primary highways to keep traffic flowing by providing minor breakdown assistance and aiding with traffic control at crash scenes. This chapter establishes the requirements for a sponsorship for this program. The purpose of this sponsorship program is to provide contributory support for the primary road fund. The highway helper fleet is funded through the primary road fund and provides a public service.

761—124.2(307) Contact information. Information relating to the issuance of requests for proposals when sponsorship opportunities become available may be obtained from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at (515)239-1296.

761—124.3(307) Definitions. As used in this chapter, unless the context otherwise requires:

“Acknowledgment sign” means an official sign placed within the right-of-way which meets all design and placement guidelines for acknowledgment signs as covered in Part 2 of the MUTCD, and all sign design principles covered in the most current edition of the “Standard Highway Signs and Markings Book,” as published by the U.S. Department of Transportation, Federal Highway Administration, and which is intended only to inform the traveling public that a highway-related service, product or monetary contribution has been sponsored by a person, firm or entity.

“Advertise” means to provide information on a sign which includes, but is not limited to, any of the following: promotional offers, location directions, a listing of amenities, descriptive words or phrases, telephone numbers, Internet addresses including domain names, slogans or any message that is extraneous to the identification of a single-sponsoring person, firm or entity.

“Freeway-primary highway” means those highways under department jurisdiction which have been constructed as a fully controlled access facility with no access to the facility except at established interchanges.

“Highway helper vehicle” means a motor vehicle included in the program as designated by the department.

“Identification” means a display on an acknowledgment sign which is limited to the name of the sponsor or a registered or unregistered trademark in addition to or instead of the name of the sponsor, if such mark is used consistently by the sponsor whenever and wherever the firm’s or entity’s name is visible to the public, and the medium will allow. If multiple trademarks are used by the sponsor, identification is provided only by the one in the simplest form needed to identify the sponsor.

“Interstate highway” means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

“*Main-traveled way*” means the portion of the roadway for movement of vehicles on which through traffic is carried, exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways or parking areas.

“*MUTCD*” means the Manual on Uniform Traffic Control Devices as adopted in 761—Chapter 130.

“*Right-of-way*” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

“*Sponsor*” means a single person, firm or entity which has been approved by the department for the highway helper sponsorship program. If the highway helper sponsorship program includes more than one urban area, this definition shall not preclude the approval of one sponsor per urban area.

761—124.4(307) General provisions.

124.4(1) *Program ownership and operation.* The department shall retain ownership and operation of the highway helper program.

124.4(2) *Monetary contributions.* Subject to the provisions of Iowa Code chapter 23A, the department may, through an equitable procurement process, receive a monetary contribution from an approved sponsor. This monetary contribution shall be deposited into the primary road fund and subsequently spent for highway purposes, including the maintenance and operation of the highway helper sponsorship program.

124.4(3) *Placement of signs.* Subject to the provisions of Iowa Code section 321.253, the department may erect acknowledgment signs within the right-of-way along the main-traveled way of any interstate or freeway-primary highway patrolled by the highway helper vehicles.

124.4(4) *Program discontinuance.* The department shall have the right to discontinue the program, or portions thereof, if the program or any component part of the program is found to be in violation of federal law or regulation.

124.4(5) *Termination of sponsorship agreement.* The department shall have the right to terminate a sponsorship agreement for reasons, as determined by the department, based on safety concerns, interference with the free and safe flow of traffic, or a determination that the sponsorship agreement or acknowledgment sign is not in the public interest.

761—124.5(307) Sponsorship agreements.

124.5(1) *Federal Highway Administration approval.* All sponsorship agreements are subject to approval by the Federal Highway Administration.

124.5(2) *Qualifications.* A person, firm or entity may be eligible to participate as a sponsor for the program. However, the department may deny the proposal or application from any potential sponsor if the sponsor’s participation might be deemed by the state as a partisan endorsement or have an adverse effect on the program.

124.5(3) *Selection process.* Sponsors will be approved through a fair and transparent procurement process, as approved by the department, subject to the provisions of 761—Chapter 20.

124.5(4) *Sponsor benefits.* Subject to terms mutually agreed upon by the department and sponsor during or following the procurement process, the following benefits may be offered:

a. Identification of the sponsor on acknowledgment signs along the interstate or freeway-primary highway, subject to rule 761—124.6(307).

b. Placement of the sponsor’s name and logo on a highway helper vehicle, not to exceed the dimension and size requirements for the particular highway helper vehicle, as determined by the department.

124.5(5) *Discrimination prohibited.* As a condition of approval as a sponsor, the sponsor shall give the department written assurance of the sponsor’s conformity with all applicable laws prohibiting discrimination based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability.

761—124.6(307) Acknowledgment sign criteria.

124.6(1) Identification displayed.

- a. An acknowledgment sign shall not advertise.
- b. An acknowledgment sign shall not contain any messages, lights, symbols or trademarks that resemble any official traffic control device.
- c. An acknowledgment sign shall contain the appropriate lettering to indicate “HIGHWAY HELPER” and may contain an identification of one sponsor.
- d. The department shall review the acknowledgment sign proposed by the sponsor and shall have full authority to determine whether proposed designs from sponsors advertise or provide identification.
- e. The department shall not approve any acknowledgment sign proposed by the sponsor if the sign might be deemed a partisan endorsement or have an adverse effect on the program.

124.6(2) Design and placement of acknowledgment sign.

- a. The department shall determine when adequate spacing is available to accommodate the placement of an acknowledgment sign in accordance with the MUTCD.
- b. No more than one acknowledgment sign per interstate or freeway-primary route per direction shall be installed within an urban area. If routes run concurrently, each route may be afforded one acknowledgment sign per direction, at the department’s discretion.
- c. The entire sign display area shall not exceed 24 square feet.
- d. The area reserved for the identification of the sponsor shall not exceed one-third of the total area of the sign, shall be a maximum of 8 square feet, and shall not be located at the top of the sign.
- e. Sponsors must provide signs measuring 24 inches high and 48 inches wide that are fabricated from .080 aluminum with 2-inch radius corners and have a ½-inch white border for placement on the acknowledgment signs.
- f. The department shall inspect signs received from sponsors, and if the signs meet the requirements contained in this rule, the department shall perform the installation.
- g. All acknowledgment signs erected by the department shall conform to the MUTCD.

These rules are intended to implement Iowa Code subsection 23A.2(9) and Iowa Code section 307.24.